

# **EXHIBIT 1**

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 78/405596

**APPLICANT:** The Snack Factory, Inc.

**\*78405596\***

**CORRESPONDENT ADDRESS:**

Allan M. Lowe  
Lowe Hauptman Gilman & Berner, LLP  
1700 Diagonal Road, Ste. 300  
Alexandria, VA 22314

**RETURN ADDRESS:**  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MARK:** PRETZEL CRISPS

**CORRESPONDENT'S REFERENCE/DOCKET NO :** 564-017itu

**CORRESPONDENT EMAIL ADDRESS:**

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

## OFFICE ACTION

**TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.**

Serial Number 78/405596

The assigned examining attorney has reviewed the referenced application and determined the following.

### Refusal - Descriptiveness of the Mark

The examining attorney refuses registration on the Principal Register because the proposed mark merely describes the goods. Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1); TMEP section 1209 *et seq.*

A mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. 1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Brightâ€™Cres Ltd.*, 204 USPQ 591 (TTAB 1979); TMEP section 1209.01(b).

Applicant has requested registration of the mark PRETZEL CRISPS for pretzels. PRETZELS is the generic name for the goods as evidenced by the identification thereof. A generic term is the name of a particular type, kind, genus or class of goods in which an individual article or service is but a member. It is well established that generic terms are not entitled to trademark protection because such words are in "the public domain and available for all to use," *Hallmark Cards, Inc. v. Hallmark Dodge, Inc.*, 634 F.Supp. 990, 997 [ 229 USPQ 882 ] (W.D. Mo. 1986), and because such terms "describ[e] not only a particular product or service but also a type or kind of product or service." *First Fed. Sav. & Loan Ass'n of Council Bluffs v. First Fed. Sav. & Loan Ass'n of Lincoln*, 929 F.2d 382, 383 [ 18 USPQ2d 1394 ] (8th Cir. 1991). Thus, determining whether an alleged mark is generic involves a two-step factual analysis: "First, what is the genus of goods or services at issue? Second, is the term sought to be registered . . . understood by the relevant public primarily to refer to that genus of goods or services?" *H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs*, 782 F.2d 987, 990, 228 USPQ 528, 530 (Fed. Cir. 1986). CRISPS refers to a particular type of food. See attached third party registrations in which CRISPS has been disclaimed for related goods. It is important to note that the registrations are newer than the applicant's Registration No. 2139135 for POPCORN CRISPS. The term has evolved in its treatment on the Principal register due to evidence regarding its definition. See attached definition from *The American Heritage â Dictionary of the English Language*, Third Edition copyright â 1992 establishing the common meaning of CRISPS. The applicant's mark is comprised of highly descriptive and generic terms. The combination of the terms does not create a separate commercial impression sufficient to obviate a refusal under Trademark Act Section 2(e)(1). For the foregoing reasons, the examining attorney refuses registration under Trademark Act Section 2(e)(1).

### Section 2(f)/ Supplemental Register Inappropriate

Applicant should note that because this application was filed on the basis of a bona fide intent to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. Section 1051(b), and the applicant has not alleged use of the mark in commerce in either an amendment to allege

use or a statement of use, any claim of distinctiveness under Section 2(f) is inappropriate.

Moreover, the mark in an application under Trademark Act Section 1(b), 15 U.S.C. Section 1051(b), is also not eligible for registration on the Supplemental Register until an acceptable amendment to allege use under 37 C.F.R. Section 2.76 or statement of use under 37 C.F.R. Section 2.88 has been timely filed. 37 C.F.R. Section 2.47(c); TMEP section 1105.01(a)(vii). When such an application is changed from the Principal Register to the Supplemental Register, the effective filing date of the application is the date of filing of the allegation of use. 37 C.F.R. Section 2.75(b); TMEP section 708.01.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

#### **Search**

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

#### **Response Guidelines**

No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. The applicant must sign the response. In addition to the identifying information required at the beginning of this letter, the applicant should provide a telephone number to speed up further processing. If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

### **NOTICE: TRADEMARK OPERATION RELOCATING OCTOBER AND NOVEMBER 2004**

The Trademark Operation is relocating to Alexandria, Virginia, in October and November 2004. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Applicants, registration owners, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at [www.uspto.gov](http://www.uspto.gov).

USPTO  
/Tracy Whittaker-Brown/  
Trademark Examining Attorney  
Law Office 111  
571-272-9397

#### **How to respond to this Office Action:**

You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://eteas.uspto.gov/V2.0/oa242/WIZARD.htm> and follow the instructions therein, but you must wait until at least 72 hours after receipt if the office action issued via e-mail). PLEASE NOTE: Responses to Office Actions on applications filed under the Madrid Protocol (Section 66(a)) CANNOT currently be filed via TEAS.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

**FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.**

# crisp

**crisp** (krɪsp) *adjective*

**crisp-er, crisp-est**

1. **Firm but easily broken or crumbled; brittle:** *crisp potato chips.*
2. **Pleasingly firm and fresh:** *crisp carrot and celery sticks.*
3. **a.** Bracing; invigorating: *crisp mountain air.* **b.** Lively; sprightly: *music with a crisp rhythm.*
4. **Conspicuously clean or new:** *a crisp dollar bill.*
5. **Marked by clarity, conciseness, and briskness:** *a crisp reply.* See synonyms at incisive.
6. **Having small curls, waves, or ripples.**

*verb, transitive & intransitive*

**crisped, crisp-ing, crisps**

To make or become crisp.

*noun*

1. **Something crisp or easily crumbled:** *The roast was burned to a crisp.*
2. **A dessert of fruit baked with a sweet, crumbly topping:** *apple crisp.*
3. **Chiefly British.** A potato chip.

[Middle English, curly, from Old English, from Latin *crispus*.]

— **crisp** <sup>1</sup>**ly** *adverb*

— **crisp** <sup>1</sup>**ness** *noun* [\[1\]](#)

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[\[1\]](#) *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

**DESIGN MARK**

**Serial Number**

76278651

**Status**

REGISTERED

**Word Mark**

GENOA CRISPS

**Standard Character Mark**

No

**Registration Number**

2701213

**Date Registered**

2003/03/25

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

NONNI'S FOOD COMPANY, INC. CORPORATION FLORIDA 601 SOUTH BOULDER TULSA  
OKLAHOMA 74119

**Goods/Services**

Class Status -- ACTIVE. IC 030. US 046. G & S: snack foods, namely  
crackers. First Use: 1999/10/01. First Use In Commerce: 1999/10/01.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CRISPS" APART FROM THE  
MARK AS SHOWN.

**Filing Date**

2001/06/28

**Examining Attorney**

STRZYZ, KAREN M.

**Attorney of Record**

KATHRYN M. WHEBLE

# GENOA CRISPS

**TYPED DRAWING**

**Serial Number**

75442195

**Status**

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

**Word Mark**

CALIFORNIA CRISPS

**Standard Character Mark**

No

**Registration Number**

2228609

**Date Registered**

1999/03/02

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

ADRIENNE'S GOURMET FOODS CORPORATION CALIFORNIA 849 Ward Dr Santa  
Barbara CALIFORNIA 93111

**Goods/Services**

Class Status -- ACTIVE. IC 030. US 046. G & S: CRACKERS. First  
Use: 1991/11/12. First Use In Commerce: 1991/11/12.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CRISPS" APART FROM THE  
MARK AS SHOWN.

**Section 2f Statement**

2(F) ENTIRE MARK

**Filing Date**

1998/02/27

**Examining Attorney**

PRESSEY, MONTIA GIVENS

**DESIGN MARK**

**Serial Number**

75508874

**Status**

REGISTERED

**Word Mark**

SKY CRISPS

**Standard Character Mark**

No

**Registration Number**

2374285

**Date Registered**

2000/08/08

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

DELICIOUS BRANDS, INC. CORPORATION DELAWARE 2070 MAPLE STREET DES  
PLAINES ILLINOIS 60018

**Goods/Services**

Class Status -- ACTIVE. IC 030. US 046. G & S: COOKIES AND  
GRAIN-BASED SNACK FOODS. First Use: 1998/11/11. First Use In  
Commerce: 1998/11/11.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CRISPS" APART FROM THE  
MARK AS SHOWN.

**Filing Date**

1998/06/25

**Examining Attorney**

SHARPER, SAMUEL E.

**Attorney of Record**

GLENDA DA FONSECA



# SKY CRISPS

**DESIGN MARK**

**Serial Number**

75661878

**Status**

REGISTERED

**Word Mark**

EURO CRISPS BAKED CINNAMON RAISIN MUESLI BREAD SLICES

**Standard Character Mark**

No

**Registration Number**

2780968

**Date Registered**

2003/11/11

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

**Owner**

Backerhaus Veit Ltd. CORPORATION CANADA 70 Whitmore Road Woodbridge,  
Ontario, L4L 7Z4 CANADA

**Goods/Services**

Class Status -- ACTIVE. IC 030. US 046. G & S: snack food  
comprised of sliced, baked and seasoned muesli bread.

**Foreign Country Name**

CANADA

**Foreign Priority**

FOREIGN PRIORITY CLAIMED

**Foreign Application Number**

1005250

**Foreign Filing Date**

1999/02/15

**Foreign Registration Number**

TMA557971

**Foreign Registration Date**

2002/02/15

**Foreign Expiration Date**

2017/02/15

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CRISPS" and "BAKED CINNAMON RAISIN MUESLI BREAD SLICES" APART FROM THE MARK AS SHOWN.

**Description of Mark**

The mark consists of the words "EURO CRISPS" appearing within a design and the words "BAKED CINNAMON RAISIN MUESLI BREAD SLICES" appearing on representation of a ribbon.

**Filing Date**

1999/03/17

**Examining Attorney**

COREA, ANDY

**Attorney of Record**

Lawrence E. Abelman



**DESIGN MARK**

**Serial Number**

76126955

**Status**

REGISTERED

**Word Mark**

GLENNY'S SOY CRISPS

**Standard Character Mark**

No

**Registration Number**

2514808

**Date Registered**

2001/12/04

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

Glenn Foods, Inc. PARTNERSHIP NEW YORK 181 S. Franklin Ave. Ste 501  
Valley Stream NEW YORK 11581

**Goods/Services**

Class Status -- ACTIVE. IC 030. US 046. G & S: SOY CRISPS. First  
Use: 2000/06/01. First Use In Commerce: 2000/06/01.

**Prior Registration(s)**

2429861

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SOY CRISPS" APART FROM  
THE MARK AS SHOWN.

**Section 2f Statement**

as to "GLENNY'S"

**Filing Date**

2000/09/08

**Examining Attorney**

**Print: Nov 15, 2004**

**76126955**

BELENKER, ESTHER

**-2-**

GLENNY'S SOY CRISPS

**DESIGN MARK**

**Serial Number**

76270170

**Status**

REGISTERED

**Word Mark**

RICE CRISPS

**Standard Character Mark**

No

**Registration Number**

2642172

**Date Registered**

2002/10/29

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

**Owner**

I LAN FOODS IND. CO., LTD. CORPORATION TAIWAN No. 19-13, Shin Cheng N. Road Shin Cheng Li, Su-Aou, I Lan TAIWAN

**Goods/Services**

Class Status -- ACTIVE. IC 030. US 046. G & S: rice crackers, rice, porridge, cereal-based snack food, rice-based beverages, pastries, biscuits, vinegar, candies, tea. First Use: 1990/06/21. First Use In Commerce: 1999/07/01.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RICE CRISPS" APART FROM THE MARK AS SHOWN.

**Filing Date**

2001/06/13

**Examining Attorney**

TINYK, MICHAEL

**Attorney of Record**

Marcia A. Auberger





**DESIGN MARK**

**Serial Number**

76446667

**Status**

REGISTERED

**Word Mark**

TREASURE CRISPS

**Standard Character Mark**

No

**Registration Number**

2752459

**Date Registered**

2003/08/19

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

Ragonese, Regina A. INDIVIDUAL UNITED STATES 339 Ipswich Road Boxford  
MASSACHUSETTS 01921

**Goods/Services**

Class Status -- ACTIVE. IC 030. US 046. G & S: FOOD PRODUCTS,  
NAMELY, FLAT BREAD. First Use: 2001/10/23. First Use In Commerce:  
2001/10/23.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CRISPS" APART FROM THE  
MARK AS SHOWN.

**Filing Date**

2002/09/03

**Examining Attorney**

ADKINS, CHRISTOPHER

# TREASURE CRISPS